

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

LARRY L. KOGER,

Plaintiff,

v.

CIVIL ACTION NO. 1:08-0909

NORFOLK SOUTHERN RAILWAY
COMPANY,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's motion in limine to exclude any reference to plaintiff's alleged loss of wages beyond the age of 60. (Doc. # 96). Plaintiff's economic expert, Dr. G. Richard Thompson, based his damages calculation on the assumption that plaintiff would have worked until he reached the age of 65. Because plaintiff would have been eligible for full retirement at the age of 60, defendant contends that it is speculative to assume that plaintiff would have worked until the age of 65. Defendant does not contend and the parties are in agreement that defendant has no provision for mandatory retirement once an employee reaches the age of 60. As the court informed the parties at the pretrial conference, while it is appropriate for defendant to cross examine plaintiff's witnesses regarding the assumptions made in Mr. Thompson's report, it is not proper to exclude any testimony thereon. Based on the foregoing, the motion is DENIED.

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record.

IT IS SO ORDERED this 16th day of November, 2009.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge